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In the Supreme Court of the United States

OCTOBER TERM, 1957

FYKE FARMER, PETITIONER,

v.

UNITED STATES OF AMERICA AND J. M. ROUNTREE, DIRECTOR OF INTERNAL REVENUE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

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The petition for a writ of certiorari in this case raises the question whether the federal courts, in the exercise of their constitutional power to adjudicate cases and controversies, may pass upon the military and foreign policies of the United States (including the prosecution of the Korean War) being carried out by the executive and legislative branches of the Government. Petitioner attempted to submit these matters to adjudication by two pleadings filed in the United States District Court for the Middle District of Tennessee. The first is a complaint for a declaratory judgment for immunity from federal income taxes, to the extent that his taxes were being used to defray military expenditures in connection with the Korean War,

Title of Case	Presidential Order Declared Invalid	Function of Order	Basis of Decision	Court
33. Valentine v. United States *ex rel* Neidecker, 299 U.S. 5 (1936)	Preliminary Extradition Warrant Issued by U.S. Commissioner in New York City	To return to France U.S. citizens wanted as fugitives from French justice	Conflict with Constitution and treaty	U.S. S. Ct.
34. United States v. Ashley Bread Co., 59 F. Supp. 671 (1944)	Regulations Issued by War Food Administration	Prohibiting bakers from reclaiming unsold goods from retailers	Separation of powers theory and conflict with statute	U.S. D. Ct., Dist. of W. Va.
35. United States *ex rel* Von Heymann v. Watkins, 159 F. 2d 650 (1947)	Proclamation No. 2662, September 8, 1945	Implementing agreements for hemispheric defense, and ordering Secretary of State to deport dangerous interned enemy aliens	Conflict with statute	U.S. 2 C.C.A.
36. United States *ex rel* Hirshberg v. Cooke, 336 U.S. 210 (1949)	Navy Regulation, *Navy Courts and Boards*, Sec. 334	Extending court-martial jurisdiction beyond term of enlistment in which offense occurred	Conflict with statute	U.S. S. Ct.
37. Youngstown Sheet and Tube Co. v. Charles Sawyer, 343 U.S. 579 (1952)	Executive Order No. 10340, April 8, 1952 (17 Fed. Reg. 3139)	Authorizing and directing Secretary of Commerce to take possession of and operate the plants and facilities of certain steel companies	Separation of powers theory and conflict with statute	U.S. S. Ct.
38. Cole v. Young, 351 U.S. 536 (1953)	Executive Order No. 10450, April 27, 1953 (18 Fed. Reg. 2489)	Extending the provisions of the Security Act of August 26, 1950, to apply to all civilian employees of the national government	*Ultra vires* enabling statute	U.S. S. Ct.

coupled with a prayer for an injunction against collection of these taxes. (Complaint, R. 14a-28a.)[1] The second pleading is petitioner's answer to the complaint (R. 145a-147a) of the United States for income taxes for the year 1949 in the amount of $4,733.95.[2]

Both actions were heard together and decided upon motions by the Government on the pleadings—in petitioner's action, on motion to dismiss the complaint (R. 108a), and in the Government's action for taxes due, on motion for the relief requested (R. 170a).[3]

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[1] The original complaint included a lengthy brief (R. 32a-53a). It was amended three times at length (R. 69a-83a, 85a-94a, 109a-123a). This action was brought against the District Director of Internal Revenue, the Deputy Collector of Internal Revenue, and the First National Bank of Springfield, Tennessee (R. 15a). The Bank was made a party because it held petitioner's deposit of $6,750, subject to tax levy and warrant of distraint (R. 54a-56a). The Bank was dismissed from the case when, with petitioner's consent, the funds were deposited in the registry of the District Court (R. 64a, 84a). The defendants' motion to dismiss the original complaint (R. 53a-54a) was at one point denied by the District Court in order to give petitioner an opportunity "to develop his case fully on the merits" (R. 96a). A second motion to dismiss the amended complaint (R. 96a-97a) was likewise denied (R. 101a). The defendants then answered (R. 101a-103a).

[2] The answer of 120 pages is separately printed. While disputing the correct amount, it admits that income taxes are due (p. 2). It then asserts that petitioner is not required to pay any income taxes because the proceeds are "being used by the legislative and executive branches of the government (acting outside the scope of any powers conferred upon them by the Constitution) for the commission of crimes against peace, war crimes and crimes against humanity in violation of international law which is part of the law of the land of the United States" (p. 4). The judgment for taxes was for the correct amount of $4,706.56 (R 173a).

[3] Petitioner's motion to take depositions and secure answers to interrogatories were stayed pending the decision on these motions (R. 109a). The appendix erroneously captions the order of the District Court of September 26, 1956, denying petitioner's motion for leave to file affidavits, as "Motion for Judgment on the Pleadings Denied" (R. 167a-168a).

Both motions were granted and judgments entered accordingly (R. 138a-139a; 172a-173a). The memorandum opinion of the District Court (R. 125a-131a) is reported at 149 F. Supp. 327. Its opinion was adopted and its judgment affirmed by the court below in a *per curiam* opinion (Pet. 43-45) reported at 252 F. 2d 490. A petition for rehearing was denied on March 13, 1958 (Pet. 45). The petition for a writ of certiorari was filed on May 5, 1958.

The decisions below are clearly correct and there is no occasion for further review. Petitioner's "controversy" with the foreign policies of the Government of the United States is not one to be resolved in litigation over income taxes. It has long been settled that the judicial power of the federal courts does not extend to review of political actions of the executive and legislative branches of the Government undertaken in the conduct of foreign policy and international relations. *United States* v. *Curtiss-Wright Corp.*, 299 U. S. 304; *Oetjen* v. *Central Leather Co.*, 246 U. S. 297; *Foster* v. *Neilson*, 2 Pet. 253. It is equally plain that a citizen has no standing, by virtue of his common liability to pay taxes, to invoke the judicial process in order to seek such review. *Massachusetts* v. *Mellon*, 262 U. S. 447, 487-489.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

MAY, 1958.

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